requiring local cable operators to provide notice of service changes and their effect, directly on subscriber's bills at least 30 days before the changes are implemented. Cable operators should also be required to inform subscribers of their rights to challenge the reasonableness of a change in service and information on where to obtain the necessary forms in the three bills following the implementation of a service change.[157] CFA also proposes making all necessary forms available from the local franchising authority, the Commission and the offices of the local cable operator.

## H. LEASED ACCESS

In its Notice at paragraph 144 through 173, the Commission asks for comment on the Leased Commercial Access provisions of the 1992 Cable Act.[158] Comments are solicited on a wide range of issues. CFA is primarily concerned with the Commission's authority to set maximum reasonable rates for leased commercial access channels, how to encourage their widespread use, as Congress intended, and the Commission's authority to set special rates for non-profit users.

---

[157]If the Commission chooses to use a different time period during which subscribers can complain about service changes than the 90 days suggested by CFA, the notice requirements should be included in the bills throughout the period during which challenges to services changes can be made.

[158]§ 612.

Congress broadened the purposes of the leased commercial access provisions with the Amendments in the 1992 Act. Congress' goals are to "promote competition in the delivery of diverse sources of video programming and to assure that the widest possible diversity of information sources are made available to the public..."[159] This reflects Congress' intent for leased channels to become a source both of diversity in programming and competition to cable operators in the delivery of that programming.[160] Neither of these goals were achieved under of the 1984 Cable Act.

CFA supports the Commission's conclusion at paragraph 146 of the Notice that the regulations they must prescribe are meant to apply to all cable systems, regardless of whether they are subject to effective competition.[161] CFA cannot, however, support the Commission's tentative conclusion that the billing and collection services are provided at the discretion of the operator.

---

[159] § 612(a).

[160] The additional purpose adopted in the Conference Report is taken directly from the Senate Bill. The Senate Report stated that the leased commercial access provisions take on a purpose in addition the promoting diversity in the First Amendment sense. This provision can also "act as a safety valve for programmers who may be subject to a cable operator's market power and who may be denied access...[or] given access on unfavorable terms. Senate Report at 30.

[161] There is no indication either in the plain language of the Act or in its legislative history, that Congress intended to restrict the application of these rules in any way except by the number of channels available on a system pursuant to § 612(b)(1)(D).

Under the 1984 Act, the cable operator did not have to provide billing and collection services to leased access users. The Commission did not have to regulate prices for these services either. This has been changed under the 1992 Act. The Commission must now set maximum reasonable rates an operator can charge for providing billing and collection services.[162] It would be contrary to Congress' intent to permit cable operators to refuse to bill and collect for leased access channel users.[163]

There is evidence in both the House and Senate bills which indicates Congress understands that the leased access provisions cannot succeed without local operator billing and collection services. The House bill states "[t]he FCC Cable Report contains a recommendation that Congress require cable operators to provide billing and collection services for channel lessees. H.R. 4850, in accordance with this recommendation, requires the FCC to establish standards concerning methods for collection and billing for leased access."[164]

In the Senate bill, which is the language subsequently

---

[162]§ 612(c)(4)(A).

[163]Congress has noted the complete failure of this provision in the 1984 Act to achieve the goal of diversity. It would be an impediment to effectuating Congress' intent to give cable operators discretion with respect to billing and collection. It is impractical to expect commercial leased access users to bill and collect without the assistance of the cable operator that controls their system of distribution.

[164]House Report at 40.

adopted in Conference with several amendments, the problem is also recognized. The Senate bill states "[f]or a programmer to have any chance of success, the programmer must negotiate many elements-a reasonable rate for access and then for billing and collection..." The Senate went on to say, "...the existing provision does not work well and requires revisions."[165]

CFA believes the Commission's proposal to give local operators discretion in offering billing and collection services renders impotent the changes made by Congress in the 1992 Act. Marketplace realities prevent leased access users from obtaining much of the information necessary to provide their own billing and collection services. If the local cable operator chooses not to offer these services, the leased access user will simply not be able to offer its programming. This will perpetuate the current situation and prevent leased commercial access channels from becoming a source of greater diversity in programming and program sources as intended by Congress.[166] Therefore, CFA urges the Commission to require cable operators to provide billing and collection services for leased access users.

Leased commercial access prices have been set by cable operators and presumed reasonable since passage of the 1984 Cable Act.[167] This approach has been a complete failure. The

---

[165]Senate Report at 32.
[166]§ 612(a).
[167]1984 Cable Act, § 612(c).

Commission offers four possible approaches for setting rates for commercial leased access services at paragraph 147 of the Notice. Comments are solicited on whether rates should be set using a benchmark approach, cost of service principles or reliance on the marketplace where competition exists. CFA advocates adopting a per channel pricing mechanism consistent with the cost-based global formulaic proposed in Section VI. of these comments, reduced by average programming and other appropriate costs[168].

At paragraph 153 of the Notice, the Commission solicits comments on whether it has the authority to set special, lower maximum rates for non-profit programmers that use leased commercial access channels. CFA believes the Commission has the authority under the 1992 Act to set lower rates for non-profit users if it will help attain the goals of bringing greater diversity in programming and program distribution sources.

Congress' intent to increase diversity through use of the leased commercial access provisions of the 1992 Act is clear.[169] CFA believes that it is also clear that to achieve this end,

---

[168] Cable operators would incur no programming costs from leased access channels. The data on programming costs are available from Appendix A for these purposes.

[169] See; § 612(a). The Senate Bill's language, with several significant amendments was adopted for this section of the Conference Report. The Senate Report, in reference to this section states, "[the leased access provision] can act as a safety valve for programmers who may be subject to a cable operator's market power and who may be denied access...". Senate Report at 30.

Congress intended to give the Commission the authority to set more favorable price terms for certain programmers, if deemed necessary.[170] CFA therefore encourages the Commission to recognize it's authority to set lower maximum rate ceilings for non-profit programmers at this time. CFA also urges the Commission to carefully review the comments filed by non-profit programmers in this proceeding to determine if such non-profit ceilings are necessary.

CFA supports lower rates for non-profit programmers in principle. However, CFA strongly believes that the Commission must set strict qualifications for non-profit programmers to take advantage of these reduced rates. These special rates should be reserved for those non-profit programmers who truly need them to gain access to these channels, or this may lead to abuse of subscribers and operators alike.

At footnote 198 of the Notice, the Commission suggests that if special non-profit rate ceilings are imposed, it would permit

---

[170]The legislative history of the 1984 Act indicates Congress' intent to permit discriminatory pricing based on the nature of the programming. This issue was not revisited in the 1992 amendments. Since Congress broadened the purposes of this section of the Act, it is reasonable to conclude that Congress intended that varied price ceilings would be permitted under the 1992 Act. "...[N]othing in these provisions is intended to impose on a cable operator the requirement that he make available on a non-discriminatory basis, channel capacity set aside for commercial use by unaffiliated persons. [N]on-discriminatory access requirements could well undermine diversity goals." H.R. Rep. 934, 98th Cong., 2d Sess. 1, 51 (1984).

any non-profit organization that is organized under § 501(c)(3) of the Internal Revenue Code to take advantage of the rates. CFA believes this definition is too broad, and urges the Commission to establish a needs based test for non-profit programmers to qualify for carriage at special non-profit rates.[171]

Discriminatory pricing is permitted in an effort to effectuate Congress' intent of increased diversity, not merely to bestow a benefit on all non-profit organizations. If the Commission does not limit the programmers who can take advantage of these reduced rates, it is likely that subscribers or for-profit leased access programmers would end up subsidizing programming of all non-profit organizations regardless of their need.[172] This approach does nothing to achieve Congress' goal of increased diversity and therefore should not be endorsed by the Commission.

If the Commission finds that lower non-profit rates are appropriate to achieve greater diversity in the video marketplace, then the question turns to where the cable operator

---

[171]The Commission should look to a leased access user's programming and funding sources as well as directors and management in making this determination. Any non-profit commercial leased access user that is connected with a non-profit capable of paying the maximum reasonable price established by the Commission would not qualify for preferential rates.

[172]The realities in the non-profit organizations are that there are non-profit organizations that have significant resources. It is not appropriate for these organizations to be subsidized either by subscribers or by for-profit commercial leased access users.

will be permitted to turn to make up for this subsidy. The Commission solicits comment at paragraph 153 on the extent to which it is permitted to permit cable operators to recover the cost of providing lower non profit rates from subscribers or other leased commercial access users.

CFA opposes any system which would have subscribers of any tier of service subsidize rates for non-profit programmers who wish to use commercial leased access channels. Inflating subscriber rates would be inconsistent with Congress' goal of ensuring reasonable (or not unreasonable) rates for consumers.[173]

CFA believes the Commission has the authority to charge for-profit commercial leased access programmers a higher price to subsidize non-profit programmers. This will help effectuate Congress' goal of greater diversity, without compromising the goals of rate regulation.[174] The clear intent of Congress to permit discriminatory pricing for different classes of programming found in the 1984 Act supports CFA's conclusion. It is through discriminatory pricing of commercial leased access channels that Congress sought to increase diversity.[175] CFA believes that all of Congress' goals can best be achieved through a system of regulation which would have for-profit programmers

---

[173] § 623(a) and (c).
[174] Id.
[175] See; H.R. Rep. 934 at 50.

## I. THE SCOPE OF FRANCHISING AUTHORITY'S POWER

### 1. SETTING RATES AND ORDERING REFUNDS

In paragraph 86 of the Notice, the Commission seeks comment on several issues regarding the scope of a local franchising authority's power with respect to rate increases and refunds. CFA believes a franchising authority that qualifies to exercise regulatory jurisdiction under the 1992 Act[176] would assume equivalent power and responsibility to the Commission until its certification is revoked or denied.

In essence, the Act contemplates permitting local authorities to Act in place of the Commission if they have the appropriate resources. This would include the power to set rates after an increase request is denied and the power to require refunds by the local operator, to the extent the Commission would be permitted to do so if it retained jurisdiction.[177] Therefore, CFA urges the Commission to ensure that a qualified franchise authority that elects to exercise regulatory jurisdiction to the extent permitted under the Act has authority to set rates and order refunds.

---

[176] § 623(3).

[177] See page ___ infra. for discussion of the extent of the Commissions regulatory authority when a local franchising authority is prohibited from or does not choose to regulate.

that use commercial leased access channels subsidize qualified non-profit programmers.

The Commission suggests two methods of assuring that its regulations meet the statutory objective of § 612 in paragraph 154 of the Notice, relying on the complaint process or establishing a reporting requirement. To facilitate the review we advocate establishment of an annual reporting requirement, beginning one year after the Commission establishes the maximum price ceiling commercial leased access channels.

Operators should be required to report information such as: 1) set-aside capacity required for their system; 2) percentage of set- aside capacity used during the preceding year; 3) percentage of set-aside capacity used by qualified non-profit programmers; 4) prices charged for leased access. This reporting requirement would permit regular evaluation of commercial leased access. Relying solely on the complaint procedure is likely to leave out the non-profit programmers who need the protection most. It is likely that the non-profit programmer with limited resources may not be able to file and pursue a complaint against a cable operator. A reporting requirement will better enable the Commission to become aware of problems faced by the neediest non-profit programmers.

## I. THE SCOPE OF FRANCHISING AUTHORITY'S POWER

### 1. SETTING RATES AND ORDERING REFUNDS

In paragraph 86 of the Notice, the Commission seeks comment on several issues regarding the scope of a local franchising authority's power with respect to rate increases and refunds. CFA believes a franchising authority that qualifies to exercise regulatory jurisdiction under the 1992 Act[176] would assume equivalent power and responsibility to the Commission until its certification is revoked or denied.

In essence, the Act contemplates permitting local authorities to Act in place of the Commission if they have the appropriate resources. This would include the power to set rates after an increase request is denied and the power to require refunds by the local operator, to the extent the Commission would be permitted to do so if it retained jurisdiction.[177] Therefore, CFA urges the Commission to ensure that a qualified franchise authority that elects to exercise regulatory jurisdiction to the extent permitted under the Act has authority to set rates and order refunds.

---

[176] § 623(3).

[177] See page ___ infra. for discussion of the extent of the Commissions regulatory authority when a local franchising authority is prohibited from or does not choose to regulate.

## 2. APPEALS FROM FRANCHISING AUTHORITY DECISIONS

The Commission seeks comment on where appeals to franchising authority rate decisions are taken in paragraph 87 of the Notice. Specifically, the Commission asks whether appeals are properly taken to local courts or the Commission. CFA believes all appeals from franchising authority decisions must be taken to the Commission for resolution.

The 1992 Act bestows upon the Commission the responsibility to ensure "reasonable rates" for basic service[178] and "not unreasonable rates" for cable programming service.[179] The Commission is also permitted to delegate it's responsibility and authority to qualified local franchising authorities.[180] Furthermore, the Commission retains the power to revoke certification of the local authority.[181] If a cable operator seeks to challenge a decision made by the Commission's delegate (the local authority), it would be proper to lodge that challenge with the Commission.

CFA believes appeals of local franchising authority decisions should follow normal administrative review procedures beginning at the Commission before going into state or federal

---

[178] § 623(b).
[179] § 623(c).
[180] § 623(a)(3).
[181] § 623(a)(5).

court. This will facilitate a more uniform interpretation of the Commission's regulations. Furthermore, CFA believes the Commission is the logical forum to decide initially whether a local authority is properly interpreting Commission regulations.

## J. NEGATIVE OPTION BILLING

The Commission seeks comments related to the "Negative Option Billing" sections of the 1992 Act at paragraphs 120 and 121 of the Notice. CFA endorses the Commission's suggestion of a 30 day notice before a change in service offerings. CFA believes if there is a service change that does not include a price change, no notice to subscribers would be required under the Act.

The requirements would change when changes in service included price increases. Congress' intent was to protect consumers from paying for services they did not affirmatively request.[182] It was price increases that most concerned Congress. CFA believes that to effectuate Congress' intent, when a service change includes any increase in price, 30 days notice should be required under the Act.[183]

---

[182]§ 623(f).

[183]Congress expressly stated that "changes in the mix of programming services" which are included on a tier are not meant to be subject to the negative option billing requirements of the Act. A change in the mix of programming would not include those changes that were accompanied by a change in price for the service. If this were the case, cable operators could add services to a tier and increase rates presumably at will without first obtaining permission from subscribers. Such an interpretation would

In paragraph 121, the Commission raises questions with respect to likely service changes that operators will make upon initial implementation of the basic cable service rate structure. The Commission believes operators may split their current basic service tier into a basic and expanded basic service tier. The Commission solicits comments on whether cable operators would have to give notice to subscribers and obtain affirmative permission before they could start billing for both tiers of service under the new rate structure.

CFA believes that under the negative option billing provision of the Act, if there was no price change as a result of the new tier structure, no notice would be required. If however, the new tier structure resulted in an increase in cost for subscribers to continue to receive the same services they were previously receiving with their basic service, notice of the price increase would be required. The cable operator could not bill for expanded basic service unless the subscriber "affirmatively requested the service by name."[184]

## K. DISCOUNTED SERVICE FOR SPECIAL GROUPS

At paragraph 117 of the Notice, the Commission seeks comment on what economically disadvantaged groups other than senior

---

frustrate Congress' intent because the negative option billing provision could easily be rendered ineffective by cable operators.

[184] § 623(f).

citizens could be given reasonable discounts by cable operators. CFA believes reasonable discounts would be appropriate for senior citizens and other similarly situated groups... perhaps low income or special needs groups... pursuant to § 623(e) of the Act.